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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,510	12/14/2001	Syunji Sugaya	P/2850-53	4552
2352 7590 04/02/2010 OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403				
EXAMINER				
BOVEJA, NAMRATA				
ART UNIT		PAPER NUMBER		
3622				
MAIL DATE		DELIVERY MODE		
04/02/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/018,510	Applicant(s) SUGAYA, SYUNJI
Examiner NAMRATA BOVEJA	Art Unit 3622

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 March 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/NAMRATA BOVEJA/
Primary Examiner, Art Unit 3622

Applicant's arguments are not persuasive for the following reasons.

The Applicant argues that Gilmore does not suggest carrying out any calculation of a time necessary for presenting any advertisement. The Examiner respectfully disagrees, since Gilmore teaches repeating an advertisement to fill a time period until downloading of the target data is completed, so it does teach carrying out a time calculation for presenting the advertisements (page 2 lines 46-48 and page 4 lines 29-56). The advertisements are repeated until downloading of the target page is completed and this is based on the length of time it will take the target page to complete downloading.

Applicant also argues that Aharoni does not teach adjusting a data transfer speed applied to download the target data, because it selects a compression ratio which does not change the data transfer speed. The Examiner respectfully disagrees, since teaches adjusting a data transfer speed (abstract, col. 2 lines 11-24, col. 3 lines 62 to col. 4 lines 34, col. 6 lines 61 to col. 7 lines 6, and col. 11 lines 25-44), since it teaches the server adjusting the rate of data flow from the server to the client. Based on which compression ratio is selected, the data is downloaded at a different speed.

Applicant argues that in his invention a compression operation is not necessary. The Examiner would like to point out to the Applicant that he is arguing what he has not claimed here. The claims do not state that the use of compression operations is excluded from the scope of the claims in order to achieve the goal of adjusting a data transfer speed.

The Applicant further argues the motivation to combine the two references. With regards to this, it would have been obvious to a person of ordinary skill in the art at the time of the Applicant's invention to modify Gilmore to include user side equipment that is effective to adjust a data transfer speed applied to the target data in order to finish the downloading operation in the calculated time to efficiently use available network bandwidth and to effectively use the opportunity presented by the existence of idle time while also maximizing advertising revenues. Additionally, in regards to motivation, we have noted that evidence of a suggestion, teaching, or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved. In re Dembiczak, 50 USPQ2d 1614. Here, not only is there motivation as explained above, the two references are from analogous arts and both deal with transferring data for users. A prior art reference is analogous if the reference is in the field of applicant's endeavor or, if not, the reference is reasonably pertinent to the particular problem with which the inventor was concerned. In re Oetiker, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Furthermore, per KSR, known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art. Here, as bandwidth becomes more expensive and advertisers become increasingly interested in making use of idle time to present advertisements to users, Gilmore would be motivated to to adjust a data transfer speed of the target data to finish downloading in a calculated time to efficiently use available network bandwidth and to maximize revenues. KSR Int'l v. Teleflex Inc., 127 S.Ct. 1727 (2007).